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October 10, 2012

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: WC Docket No. 06-122
Universal Service Contribution Methodology
USAC Request for Guidance
XO Request for Review of Decision of Universal Service Administrator

Dear Ms. Dortch:

The Commission currently has before it a draft order addressing various issues relating to the USF contribution obligations of wholesale providers and their reseller customers. As XO Communications Services, LLC ("XO") explained in previous meetings, XO strongly supports certain conclusions in the draft order. XO asks that the Commission grant the reseller portions of XO's December 29, 2010 appeal of a Universal Service Fund Contributor Audit and that it direct USAC to consider "other reliable proof" submitted by wholesale carriers during an audit to establish its reasonable expectation the customer is a reseller. The Wireline Competition Bureau has previously confirmed that the Form 499-A Instructions are guidance and that contributors may rely upon other reliable proof that differs from the information identified in the Form 499-A Instructions. XO supports clarification that re-affirms these findings.

XO also supports clarification that even if USAC determines that the wholesale carrier's documentation did not satisfy the reasonable expectation standard, USAC may not assess USF on the subject revenue at both the wholesale and retail levels. Such double collection of USF violates Section 254 and the FCC's *Universal Service Orders*. Double collection can be established where USAC's records demonstrate that the reseller was a contributor to the Fund during the relevant year. XO recommends reliance on USAC's own records demonstrating payment to the Fund because they provide objective information that would reasonably be

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available to USAC or the wholesale carrier during an audit. Evidence that a reseller customer, in fact, reported its own end user revenues and made contribution to the Fund is sufficient evidence, by itself, of potential double assessment of USF on wholesale revenues. In addition, in response to the guidance request, XO urges the Commission to clarify that a confirmatory certification, executed by the reseller after the time period when services were rendered, also would provide reliable proof of potential double assessment.

Despite these helpful clarifications in the draft order, many parties have questioned a third proposed conclusion in the draft order concerning the extent of a reseller's certification to its wholesale vendor. XO agrees with Telepacific, Verizon, Sprint and others that there is no current FCC rule that requires reseller certifications on a service-by-service basis or that prohibits a customer from accurately certifying on an entity basis that it is a reseller. Any requirement that would necessitate obtaining certifications on a more specific basis would be a change in law which must be adopted on a prospective basis and only after providing the industry with adequate time to implement the change.

If the Commission nonetheless were to conclude that resellers must identify their wholesale purchases in a way that allows a wholesale provider to identify resale revenues on a service-specific basis, XO agrees with Verizon that a transition period is necessary.¹ The Commission should allow wholesale carriers to continue to use the certification language contained in the current Form 499-A Instructions for a transition period in order to allow time to implement the necessary process, reporting and billing changes. XO could not develop the systems to implement such a requirement without significant lead time and expense. XO estimates that it would take a year or more to develop systems necessary to report wholesale revenues on a service-specific rather than entity-wide basis and to bill customers properly for USF contributions. XO agrees with Verizon that specific guidance from the Commission on how to implement a service-specific certification is an essential step in developing these systems.²

Therefore, if the Commission were to require apportioning of wholesale purchases such that reseller certifications were provided on a more specific basis, it should specify how wholesale carriers may comply with the new requirement and provide an adequate transition period to implement the requirement. XO suggests that the Commission not make any service-specific revenue reporting requirement applicable without at least a year lead time from the date the FCC identifies the specific requirements of the obligations, and, therefore, not before carriers are required to report revenues received on or after January 1, 2014. That is, wholesale

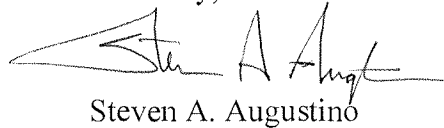
¹ Letter from Alan Buzacott, Verizon, to Marlene H. Dortch, FCC, August 30, 2012, WC Docket No. 06-122.

² *Id.*, at 2.

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carriers should be permitted to use the current certification language contained in the Instructions through all of 2013. Beginning with revenues collected in 2014, carriers could be assessed USF based on a more specific certification obligation detailed by the Commission. Given the complexities that would be involved in moving from the current entity-wide certification procedure, XO believes that this lead time would be critical to establishing an orderly transition for the industry. Therefore, if the Commission were to require apportioning of wholesale purchases or more specific reseller certifications, it should make the requirement effective with revenues collected on or after January 1, 2014.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Augustino", with a stylized flourish at the end.

Steven A. Augustino

SAA:pab

cc: Vickie Robinson